

BEFORE THE INVESTIGATIVE PANEL OF THE  
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION  
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE NO. 05-131

RE: JUDGE BRANDT C. DOWNEY, III

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**NOTICE OF FORMAL CHARGES**

TO: The Honorable Brandt C. Downey, III  
Circuit Judge, Sixth Judicial Circuit  
Pinellas County Criminal Justice Center  
14250 49<sup>th</sup> Street North  
Clearwater, Florida 33672

YOU ARE HEREBY NOTIFIED THAT the Investigative Panel of the Florida Judicial Qualifications Commission, by a majority vote of those members present at its meeting held in Tampa, Florida on September 9, 2005, pursuant to Rule 6(f), Florida Judicial Qualifications Commission Rules (AFJQCR®), as revised, and Article V, Section 12(b) of the Constitution of the State of Florida, that probable cause exists for formal proceedings to be, and the same are hereby instituted against you on the following charges:

**I. Habitual viewing of pornography from the courthouse computer**

1.Beginning on or about the year 2002, and continuing through 2005, you engaged in the practice of viewing pornographic Internet websites from the computer in your chambers.

2.Your pervasive practice of viewing pornography from the computer in your chambers resulted in frequent computer viruses infecting your computer. Courthouse anti-virus software quarantined the viruses on your computer which in turn, had to be removed by technology staff members either from a remote location or in person by reporting to your

office to remove the viruses from your computer.

3.As a result, on at least two occasions, courthouse personnel were unwittingly exposed to pornographic images when they reported to your office to physically remove viruses from your computer. In addition, on at least one known occasion, your Judicial Assistant was also exposed to a pornographic website image while present in your office during a computer repair service call.

4.You repeatedly ignored e-mail warnings such as the one below from court technology staff, advising you of the potential risk to the entire computer network due to your

viewing of certain websites:

AJudge Downey, again our Antivirus Server alerted our staff that your computer has multiple viruses. One of the technology staff members will either stop by to clean the virus or we may be able to clean the virus from the server. Please understand that viruses can be found in emails or Internet sites. Many Internet sites carry viruses and just by clicking on a link or popup window could infect your computer. **Please be careful about the sites you visit and realize that the virus you encounter could infect our entire network**Y.@ (Emphasis added).

These acts, if they occurred as alleged, were in violation of Canon, 1, by failing to maintain a high standard of conduct to preserve the integrity of the judiciary. Furthermore, these acts, if true, violate Canon 2A by eroding the public confidence and integrity in the judiciary through your pervasive conduct of viewing pornography in your chambers and thereby threatening to infect the entire courthouse computer system with unwanted computer viruses.

## II. Failure to disclose a juror written communication.

5.In the case of State v. Wilson, (Case No.: CRC-03-00026CFANO-K) you failed to advise the lawyers

representing the State of Florida and the defendant that you had received a written communication from a juror during the trial. The handwritten note from the juror allegedly advised you that said juror was concerned about a fellow juror sleeping during the trial and was further concerned about the fairness of the proceedings due to the sleeping juror.

6.You failed to disclose the note to the lawyers even after defense counsel, who independently learned of the sleeping juror, requested a continuance of the sentencing hearing to explore legal options on behalf of Mr. Wilson. In addition to denying the continuance, you also conducted legal research and cited to Foraker v. State, 731 So.2d 110(5<sup>th</sup> DCA 1999) in support of your decision to proceed with the sentencing of Mr. Wilson notwithstanding the sleeping juror. In so ruling, you stated that there was insufficient evidence of the sleeping juror to require a hearing. You made this representation knowing that you had direct evidence in the form of a juror communication evidencing that a fellow juror had in fact seen the juror sleeping during the trial.

7.Defense counsel learned about the juror communication after the courtroom bailiff who received the note from the juror reported the existence of the note to the State Attorneys Office who in turn notified defense counsel.

8.You claim to have destroyed the note instead of producing the note to the lawyers or placing the note in the court file. The withholding of the juror communication in this

case led to your disqualification.

The acts as described above if they occurred as alleged, are in violation of Canon 1, by failing to uphold the integrity and independence of the judiciary and Canon 2, by failing to comply with the law in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

**III. Improper contact and communication with female attorneys.**

9. During 2003 through 2004 you displayed an inordinate interest in a first year female assistant state attorney assigned to Judge Linda R. Allan's division. As such, you repeatedly sent quick conference computer messages to Judge Allan regarding said assistant state attorney's appearance. You also asked Judge Allan to pass a case to you involving this same prosecutor. Further, you asked Judge Allan to advise the prosecutor that her case was coming to your division so that you could in turn, watch her reaction to the news on your computer screen. In addition, you sat in the audience and watched said assistant state attorney in trial on more than one occasion.

10. On another occasion you asked said assistant state attorney to approach the bench while court was in session and told her she looked nice today. In addition, you approached her in front of other people and told her she looked pretty.

11. Furthermore, you also telephoned the assistant state attorney in her office and invited her to have lunch or dinner with you, to which she declined.

12. Your behavior toward said assistant state attorney embarrassed her and caused others to mock and ridicule her.

The acts as described above if they occurred as alleged, are in violation of Canon 1 and 2A as outlined above and in violation of Cannon 3B(5) requiring that a judge perform judicial duties without bias or prejudice including but not limited to bias or prejudice based on gender.

13. Furthermore, your inappropriate conduct toward the unnamed assistant state attorney described above is not an isolated incident. On March 23, 2005, you asked another female attorney to approach the bench while court was in session to engage in a personal conversation with her. In addition, you authored an e-mail message later that same day wherein you stated: AIT WAS NICE SEEING U IN COURT LOOKING SO PRETTY B LOOK FORWARD TO SEEING U SOON IN COURT, OR OUT B BEST REGARDS, JUDGE D®

14. Moreover, on April 6, 2005 you sent the same female attorney the following message: AWAS GREAT SEEING U LAST NIGHT AND AGAIN TODAY TOO B U LOOKED GOOD ENUF TO B OH WELL, WISHFUL THINKING B C U SOON I HOPE®

The acts as described above if they occurred as alleged, are in violation of Canon 1, 2A and Cannon 3B(5) as outlined in paragraph 12 above.

Any one or the sum of these acts, if they occurred as alleged, would impair the confidence of the citizens of this state in the integrity of the judicial system, and in you as a judge, would constitute conduct unbecoming of a member of the judiciary, would demonstrate your present unfitness to hold the office of judge, and would warrant discipline, including, but not limited to

remand, fine, suspension, with or without pay, and/or your removal from office.

Please take notice, in accordance with the FJQC Rules, as revised, that you have twenty (20) days following service of this notice to file a written answer to these charges. The original of your response and all subsequent pleadings must be filed with the Clerk of the Florida Supreme Court, in accordance with the Court's requirements, you must simultaneously file a DOS formatted three and one-half (3 1/2) diskette in WordPerfect 5.1 (or higher) format. Copies of your response should be served on the undersigned Special Counsel and all persons (other than your counsel) listed in the certificate of service below.

Dated this \_\_\_\_\_ day of December, 2005.

By: \_\_\_\_\_

Beatrice A. Butchko, Esq.  
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Special Counsel for the Florida  
Judicial Qualifications Commission

-and-

Thomas C. MacDonald, Jr., Esq.  
General Counsel  
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1904 Holly Lane  
Tampa, Florida 33629

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY a true and correct copy of NOTICE OF FORMAL CHARGES has been furnished by U.S. Mail to MARTIN ERROL RICE, P.A., Martin Errol Rice, Esq. Post Office Box 205, St. Petersburg, Fl. 33731 this \_\_\_\_\_ day of December, 2005.

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Beatrice A. Butchko